

REMARKS

Claims 1-20 are the claims currently pending in the Application.

Information Disclosure Statement

Applicants thank the Examiner for acknowledging review and consideration of the references cited in the Information Disclosure Statements filed on March 28, 2001 and September 3rd, 2002.

However, Applicants note that the Examiner has failed to acknowledge the sixth reference, "U Unison" Ireland on the Web, pp. 1-2, downloaded on October 20, 2000 from <http://ptv.ucd.ie/c=about>, cited on page two of the Information Disclosure Statement filed on March 28, 2001. Therefore, the Examiner is respectfully requested to acknowledge review and consideration of this reference.

Rejection of Claims 1, 6, 8, 9, 14, 16, 19 and 20 under 35 U.S.C. § 102

Claims 1, 6, 8, 9, 14, 16, 19 and 20 are rejected under 35 U.S.C. § 102, as being anticipated by Black et al., U.S. Patent No. 5,774,591. This rejection is traversed.

For at least the following reasons, Applicants' claimed invention is neither anticipated by nor obvious from the cited reference. By way of example, independent claims 1, 8, 16, 19 and 20 require selecting an alternate item, if the predefined negative behavior is detected.

Black discloses a system that analyzes a sequence of images to track human head and facial features over time (Black, Abstract). Black discloses that a computer is connected to an image acquisition system for observing a user's emotional state and adjusts certain operations

of the software based on the interpretation of the expression recognition system (Black, column 26, lines 50-67); and that head and eye movements of the user may be tracked to associate emotional state with the activity of the user (Black, column 27, lines 18-27).

Black does not disclose or suggest a system that displays first and alternate item selections, and the Examiner seems to acknowledge Black's deficiency in this area (Office Action, page 4).

Further, Black does not disclose or suggest selecting an alternate item, as further required by independent claims 1, 8, 16, 19 and 20. Therefore, Black does not disclose or suggest the recitations of independent claims 1, 8, 16, 19 and 20.

Claim 6 depends from independent claim 1, and claims 9 and 14 depend from independent claim 8. Therefore, claims 6, 9 and 14 incorporate novel and non-obvious features of their respective base claims and are thus patentably distinguishable over the prior art for at least the reasons that their respective base claims are patentably distinguishable over the prior art. Accordingly, this rejection should now be withdrawn.

Rejection of Claims 2, 3, 7, 10, 11 and 15 under 35 U.S.C. § 103

Claims 2, 3, 7, 10, 11 and 15 are rejected under 35 U.S.C. § 103 as being obvious from Black in view of Hendricks et al., U.S. Patent No. 5,798,785. This rejection is traversed.

Claims 2, 3 and 7 depend from independent claim 1, and claims 10, 11 and 15 depend from independent claim 8. Therefore, claims 2, 3, 7, 10, 11 and 15 incorporate novel and non-obvious features of their respective base claims. As discussed, Black does not disclose or suggest the recitations of the independent claims 1 and 8.

Hendrix does not cure the deficiencies of Black as they relate to independent Claims 1 and 8. Hendrix discloses a television program delivery system that gathers and analyzes data and can select programs suggested to a subscriber (Hendrix, Abstract). Hendrix discloses that the terminal poses questions or lists of subjective entries using menus to the subscriber and receives the subscriber's responses using a user interface with menus, usually an alphanumeric remote control, from which search entries describing the subscriber's preferences in mood, type of program, category/genre, after coming year preference and standard rating, can be entered (Hendrix, column 3, lines 5-17). The system then uses these entries, or keywords that correlate to entries, to search a database for the requisite program, and displays a suggestion for a program to the user (Hendrix, column 3, lines 13-21).

Hendrix and Black, even taken together as a whole, do not disclose or suggest selecting an alternate item, if the predefined negative behavior is detected. That is, Black and Hendrix do not disclose or suggest the feature that an alternate item is selected based on detecting a predefined negative behavior. Hendrix relies on menus from which the subscriber may select and alphanumeric information is entered by the subscriber, for example via a remote control.

In fact, Black and Hendrix belong to the prior art recognized by Applicants' disclosure, because Black and Hendrix do not disclose the problems recognized by Applicants' claimed invention, let alone disclose or suggest the solutions provided by Applicants claimed invention. For example, the problem of selecting an item based on audio or video information from a user is not disclosed or suggested by Black or Hendrix. Further, selecting an alternate item when a user's predefined negative behavior is detected, is not disclosed or suggested by Black or Hendrix.

Moreover, Applicants respectfully submit that there would have been no suggestion of motivation for Applicants' claimed invention based on Black and Hendrix. The Examiner states that it would have been obvious to combine Black and Hendrix "in order to provide a system capable of recommending alternate media content selections based upon a user's dissatisfaction with the original media content." This statement of a "motivation" seems to be a paraphrase of portions of independent claims of Applicants' claimed invention. However the Examiner has provided no evidence of motivation for Applicants' claimed invention contained in the prior art. It is respectfully submitted that a person of ordinary skill in the art would not have been motivated for Applicants' claimed invention based on Hendrix's menu-driven system for receiving alphanumeric information from the subscriber with the facial expression and facial gesture recognition system for recognizing human emotions of Black, without impermissible hindsight reconstruction based on Applicants' own claimed invention.

Accordingly, claims 2, 3, 10 and 11 are patentably distinguishable over the prior art for at least the reasons that their respective independent base claims are patentably distinguishable over the prior art. Therefore, this rejection should now be withdrawn.

Rejection of Claims 4, 5, 12, 13, 17, and 18 under 35 U.S.C. § 103

Claims 4, 5, 12, 13, 17 and 18 are rejected under 35 U.S.C. § 103 as being obvious from Black in view of Chino et al., U.S., Patent No. 6, 118,888. This rejection is traversed.

Claims 4 and 5 depend from independent claim 1, claims 12 and 13 depend from independent claim 8, and claim 18 depends from independent claim 17. Therefore, claims 4, 5, 12, 13 and 18 incorporate novel and non-obvious features of their respective independent base claims.

Chino does not remedy the deficiencies of Black and Hendrix as they relate to Applicants' invention as claimed in independent claims 1, 8 and 17. The Examiner does not allege that Chino discloses or suggests the above-discussed features of Applicants' invention as recited in independent claims 1, 8 and 17.

Accordingly, claims 4, 5, 12, 13 and 18 are patentably distinguishable over the prior art for the reasons that their respective independent base claims are patentably distinguishable over the prior art. Therefore, this rejection should now be withdrawn.

In view of the foregoing discussion, the Application is now believed to be allowable and the Examiner is respectfully requested to reconsider the rejection, and to allow the Application. Should the Examiner have any questions about the within remarks, or about the Application generally, the Examiner is invited to telephone the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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